81478-3

No. 81478-3, consolidated with Nos. 81480-5, 81481-3, 81759-6, 81758-8

SUPREME COURT OF THE STATE OF WASHINGTON

HAJRUDIN KUSTURA, ET AL,

Petitioners,

v.

DEPARTMENT OF LABOR & INDUSTRIES,

Respondent.

SUPPLEMENTAL BRIEF OF RESPONDENT DEPARTMENT OF LABOR & INDUSTRIES

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I. INTRODUCTION

In this consolidated workers' compensation case, seven claimants variably limited in English proficiency (LEP) challenge the Court of Appeals' holding that Washington's interpreter statute, chapter 2.43 RCW, does not entitle them to free interpreter services during the Department of Labor & Industries claim administration or Board of Industrial Insurance Appeals proceedings under Title 51 RCW. They also challenge the holding that the English-written notices they received satisfied due process and equal protection. Each of the claimants retained counsel and appealed certain Department orders to the Board, where they were provided with an interpreter at Board expense. Although they challenge the interpreter services as inadequate, none asserts prejudice that would justify a remand.

The Court of Appeals correctly concluded that neither chapter 2.43 RCW nor any other legal basis allows the claimants to recover personal interpreter expenses allegedly incurred at the Department or Board. The Court of Appeals properly affirmed the Board dismissal of the appeals of Lukić, Mašić, Memišević, and Resulović because there were no extraordinary circumstances or diligence to excuse their late appeals. The claimants showed no violation of due process because the Department may use an English language notice where a LEP person can exercise diligence and make further inquiry. The use of English in Department

notices does not create a suspect class or violate any principle of equal protection because it is rationally related to government purposes.[1]

II. ISSUES PRESENTED

This consolidated case raises the following issues, but not every issue pertains to each of the seven claimants, who did not uniformly raise or preserve the issues. Appendix A contains a table showing which claimants raised and preserved which issues.

1. Is the Department claim administration, which occurs before any administrative hearing or court proceeding, a "legal proceeding" covered by chapter 2.43 RCW?

2. RCW 2.43.040 assigns interpreter cost to a non-indigent LEP person, except where government initiates a legal proceeding such as with a criminal charge. Does the statute authorize the non-indigent claimants to recover personal interpreter expenses they allegedly incurred during the Board proceedings, such as those for communications with counsel and discovery?

3. Is due process violated by the Department's English language notices to LEP persons, when such persons can, with reasonable diligence, respond to such notices?

4. Does the mere use of English to a LEP person discriminate based on the person's national origin or violate equal protection?

5. Four claimants missed the statutory appeal deadline but did not show any diligent attempt to respond to the Department orders or show they missed the deadline due to their limited English proficiency. Was extraordinary relief properly denied?

[1] The text of chapter 2.43 RCW in its entirety is set forth in Appendix B.

III. ARGUMENT

A. Chapter 2.43 RCW Does Not Entitle The Claimants To Recover Personal Interpreter Expenses They Allegedly Incurred At The Department Or Board

Citing chapter 2.43 RCW, the claimants argue they are entitled to reimbursement for personal interpreter expenses they allegedly incurred at every stage of the Department claim administration and their appeals to the Board. *See, e.g., Kustura* Petition 9-11. This argument has no support in the statutory language and was properly rejected by the Court of Appeals. *See Kustura v. Dep't of Labor & Indus.*, 142 Wn. App. 655, 672-82, 175 P.3d 1117 (2008) (consolidating *Kustura*, *Lukić*, and *Memišević*); *Ferenčak v. Dep't of Labor & Indus.*, 142 Wn. App. 713, 728-29, 175 P.3d 1109 (2008); *Meštrovac v. Dep't of Labor & Indus.*, 142 Wn. App. 693, 707-09, 176 P.3d 536 (2008); *Mašić v. Dep't of Labor & Indus.*, 2008 WL 1778315, at *6 (Apr. 21, 2008); *Resulović v. Dep't of Labor & Indus.*, 2008 WL 1778229, at *4 (Apr. 21, 2008).

1. The Department claim administration is not a "legal proceeding" covered by chapter 2.43 RCW

The Court of Appeals concluded that the Department claim administration is not a "legal proceeding" subject to the interpreter requirements of chapter 2.43 RCW. *Kustura*, 142 Wn. App. at 680. This holding is consistent with the plain statutory language. *See Udall v. T.D.*

Escrow Servs., Inc., 159 Wn.2d 903, 909, 154 P.3d 882 (2007) (statute is plain if not "susceptible to more than one reasonable interpretation").

Chapter 2.43 RCW requires appointment of an interpreter when a non-English-speaking person is involved in a "legal proceeding":

> Except as otherwise provided in this section, when a non-English-speaking person is involved in a *legal proceeding*, the appointing authority shall appoint a qualified interpreter.

RCW 2.43.030(1)(c) (emphasis added). "Non-English-speaking person" is "any person involved in a legal proceeding who cannot readily speak or understand the English language, but does not include hearing-impaired persons who are covered under chapter 2.42 RCW." RCW 2.43.020(1).

The claimants characterize the Department claim administration combined with the Board and court proceedings as one "legal proceeding" throughout which an interpreter is required. *See, e.g., Kustura* Petition 9-11. Based on this interpretation, they argue that the Department claim processing is a "legal proceeding." The statute, however, defines a "legal proceeding" to mean a (1) proceeding in any court, (2) grand jury hearing, or (3) hearing before an inquiry judge or a specified administrative body:

> "Legal proceeding" means a proceeding in any court in this state, grand jury hearing, or *hearing* before an inquiry judge, or *before an administrative* board, commission, *agency*, or licensing body *of the state* or any political subdivision thereof.

RCW 2.43.020(3) (emphasis added).

Read according to its plain language, the statute thus lists three types of legal proceedings in parallel:

> "Legal proceeding" means a
> - proceeding in any court in this state,
> - grand jury hearing, or
> - hearing before an inquiry judge, or before an administrative board, commission, agency, or licensing body of the state or any political subdivision thereof.

RCW 2.43.020(3) (bullets added). The Department claim administration is not a court proceeding, grand jury hearing, or hearing. Thus, it is not a "legal proceeding" covered by chapter 2.43 RCW. *See Adams v. King County*, 164 Wn.2d 640, 650, 192 P.3d 891 (2008) (express inclusion of things in a statute implies the exclusion of the other).

The claimants read the statute to include any "proceeding before an agency." *See, e.g., Kustura* Petition 10. But the term "before an administrative . . . agency . . . of the state" modifies only the immediately preceding noun "hearing." *See Berrocal v. Fernandez*, 155 Wn.2d 585, 593, 121 P.3d 82 (2005) ("qualifying words and phrases refer to the last antecedent" unless contrary intent appears). The claimants' interpretation is grammatically impossible and is "precisely the sort of telescopic interpretation that the last-antecedent rule disfavors: words leaping across stretches of text, defying the laws of both gravity and grammar." *Flowers v. Carville*, 310 F.3d 1118, 1124 (9th Cir. 2002).

Further, the claimants' assumption that the term "proceeding" encompasses the Department claim administration does not take into account the common meaning of the term, which includes the "business conducted by a court or other official body; a hearing." *Kustura*, 142 Wn. App. at 679 n.45 (quoting Black's Law Dictionary, 1241 (8th ed. 2004)).

The Court of Appeals adopted the only reasonable interpretation to hold that the Department claim administration is not a "legal proceeding" under chapter 2.43 RCW and is thus not subject to the statute. *Kustura*, 142 Wn. App. at 680. In a workers' compensation case, a "legal proceeding" occurs only if an aggrieved party appeals a Department decision to the Board and obtains a hearing. *See* RCW 51.52.050–.104. The statute provides no basis for interpreter services at the Department.

2. Chapter 2.43 RCW allocated interpreter costs to the claimants, and no legal basis provides reimbursement for their alleged personal interpreter expenses

The claimants alleged they had incurred personal interpreter costs during their Board appeals.[2] The Board hearing is a "legal proceeding" covered by chapter 2.43 RCW. The Court of Appeals, however, properly rejected the claimants' Board-level interpreter cost reimbursement

[2] For example, Masic argued he used an interpreter to correct the transcript of a discovery deposition. *Masic* Petition 7. Resulović argued she hired an interpreter to respond to the Department's discovery requests. *Resulović* Petition 7-8. The others alleged without proof they incurred interpreter expenses for communicating with their attorney outside the Board hearings. *Ferenćak* Petition 4; *Kustura* 8; *Meštrovac* 7-8.

argument because the statute "does not require the Board to pay for these services." *Kustura*, 142 Wn. App. at 680. This conclusion properly follows the interpreter cost-allocation provision, RCW 2.43.040.

RCW 2.43.040 assigns interpreter costs to non-indigent LEP persons in all proceedings *not initiated by government*:

> In all legal proceedings in which the non-English-speaking person is a party, or is subpoenaed or summoned by the appointing authority or is otherwise compelled by the appointing authority to appear, *including criminal proceedings, grand jury proceedings, coroner's inquests, mental health commitment proceedings, and other legal proceedings initiated by agencies of government*, the cost of providing the interpreter shall be borne by *the governmental body initiating the legal proceedings*.

RCW 2.43.040(2) (emphasis added).

> *In other legal proceedings, the cost of providing the interpreter shall be borne by the non-English-speaking person* unless such person is indigent according to adopted standards of the body. In such a case the cost shall be an administrative cost of *the governmental body under the authority of which the legal proceeding is conducted.*

RCW 2.43.040(3) (emphasis added). The claimants do not dispute that the statute requires the government to pay for interpreter expenses only if the government initiated the legal proceeding, but they claim the government initiated their hearings here. *See, e.g., Kustura* Petition 9.[3]

[3] The statutory interpreter cost allocation is consistent with due process law that distinguishes, for interpreter services, "government-initiated proceedings seeking to affect adversely a person's status" from "hearings arising from the person's affirmative

The Court of Appeals correctly concluded that the claimants initiated the Board proceedings by filing appeals, triggering the Board jurisdiction. *See* RCW 51.52.060; *Kustura*, 142 Wn. App. at 680 (Board "authority may be invoked only by the claimant's act of initiating an appeal of the Department's action"). The statute thus allocated interpreter costs to the claimants and provides no basis for reimbursement of their alleged Board-level interpreter expenses.

The claimants do not argue that the Board initiated the legal proceedings. Instead, they again argue that the Department claim administration and the Board and court proceedings constitute one "legal proceeding" which the Department initiates. To claim the Department "initiates," they cite RCW 51.04.020(6), which authorizes the Department to "investigate the cause of all serious injuries and report to the governor from time to time any violations or laxity in performance of protective statutes or regulations". *See, e.g., Kustura* Petition 9-11.

The claimants' argument fails first because the issue turns on who initiates the Board hearing, not the Department claim administration, which, as shown above, is not a "legal proceeding." Second, the argument lacks any factual basis: there is no evidence the Department investigated the causes of any of the claimants' injuries under RCW 51.04.020(6) and

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application for a benefit". *Abdullah v. INS*, 184 F.3d 158, 165 (2d Cir. 1999) (no right to interpreter at INS interview for special agricultural worker status).

started a proceeding. Further, the statutory investigation is not connected to a workers' compensation claim or an appeal to the Board. The investigation occurs only if and after a claimant reports an industrial injury and facilitates periodic reporting to the governor. *See* RCW 51.28.010(1). Thus, even under the claimants' faulty theory that claim administration is a legal proceeding, they initiated the proceeding by applying for benefits.

Nor does Title 51 RCW authorize recovery of personal interpreter expenses as costs in this case. In a workers' compensation case, costs may be awarded to a claimant only if he or she prevails on the merits *in court*:

> If in a worker . . . appeal *the decision and order of the board is reversed or modified and if the accident fund or medical aid fund is affected by the litigation* . . . the attorney's fee fixed by the court, for services before the court only, and the fees of medical and other witnesses and the costs shall be payable out of the administrative fund of the department.

RCW 51.52.130 (fourth sentence, emphasis added). None of the claimants prevailed on the merits in court, and no court decision affected any state funds. Thus, none of the claimants is entitled to a cost award here.[4]

[4] The superior court affirmed the Board decision in each of the consolidated cases. *Ferenćak* CP 15-18; *Kustura* CP 32-41, 61-63, 89-98, 176-81; *Mašić* CP 1-3; *Meštrovac* CP 527-33; *Resulović* CP 1-6. The superior court in *Meštrovac* affirmed the Board decision on the substantive wage issues, and its ruling that the Department and Board pay for Meštrovac's alleged personal interpreter expenses was later reversed by the Court of Appeals. *Meštrovac* CP 527-33.

3. Chapters 2.43 and 2.42 RCW do not violate equal protection by providing different interpreter services for LEP and hearing impaired persons

The claimants argue that interpreting chapter 2.43 RCW to not provide free interpreter services to them violates equal protection. *See, e.g., Kustura* Petition 9 n.9. They argue that equal protection requires LEP persons receive the same interpreter services as provided to the hearing impaired persons, and they cite RCW 2.42.120(4) (interpreter required when law enforcement agency interviews hearing impaired person in criminal investigation) and *State v. Marintorres*, 93 Wn. App. 442, 969 P.2d 501 (1999) (defendant may not be assessed interpreter cost under chapter 2.43 RCW). The Court of Appeals properly rejected this argument. *Kustura*, 142 Wn. App. at 684 n.54; *Mašić*, 2008 WL 1778315, at *6 n.6; *Resulović*, 2008 WL 1778229, at *4 n.6.

The standard of review for an equal protection claim that does not involve a suspect class or a fundamental right is a minimum "rational basis" scrutiny. *E.g., Seattle Sch. Dist. No. 1 v. Dep't of Labor & Indus.*, 116 Wn.2d 352, 362, 804 P.2d 621 (1991) (citation omitted); *Willoughby v. Dep't of Labor & Indus.*, 147 Wn.2d 725, 739, 57 P.3d 611 (2002) (workers' benefits are "finite state resources," not a fundamental right).

There are several rational reasons why chapters 2.43 and 2.42 RCW may provide different interpreter services for LEP and hearing

impaired persons. For example, sign language covers most hearing impaired persons, while there are hundreds of languages that might be spoken in Washington. The challenge of providing interpreter services for LEP persons is not the same as that for hearing impaired persons.

In any event, the Department did not interview any of the claimants in a criminal investigation, and *Marintorres* is a criminal case and is inapposite here. Unlike a workers' compensation case, a criminal prosecution affects a person's fundamental liberty rights, and the government initiates the criminal prosecution. *Kustura*, 142 Wn. App. at 684 n.54; *State v. Gonzales-Morales*, 138 Wn.2d 374, 379, 979 P.2d 826 (1999) (criminal defendant has constitutional right to interpreter).

4. The Board provided and paid for interpreter services to the claimants at the hearings, and the claimants show no prejudice that would justify a remand

To the extent the claimants make arguments as to the adequacy of the interpreter services provided during the Board hearings, the arguments fail because no claimant showed any harmful error as to how the Board provided interpreter services. *See Kustura*, 142 Wn. App. at 681-82; *Ferenčak*, 142 Wn. App. at 728-29; *Meštrovac*, 142 Wn. App. at 707-09. In fact, none of them asserts any prejudice *as to the outcome. See Gutierrez-Chavez v. INS*, 298 F.3d 824, 830 (9th Cir. 2002) (prejudice as to outcome required for remand for inadequate interpreter services). They

only assert they incurred some personal interpreter expenses. *Ferenćak* Petition 4; *Kustura* 8; *Mašić* 3, 7; *Meštrovac* 7-8; *Resulović* 7-8.[5]

The record supports the conclusion that there was no harmful error. The industrial appeals judge (IAJ) in each case appointed an interpreter for each of the claimants at the Board hearings at Board expense. All the claimants except Kustura were provided with an interpreter for all the testimony and recorded statements throughout the hearings, although the IAJs did not allow the appointed interpreters to translate the claimants' confidential communications with counsel. *Ferenćak* TR; *Lukić* TR; *Mašić* TR; *Memišević* TR; *Meštrovac* TR; *Resulović* TR.[6] Kustura was provided with an interpreter only for his testimony, but he brought his own interpreter to the hearing and was permitted to have his interpreter present throughout the hearing. *Kustura* TR (9/18/02) 4.[7]

Because there is no prejudice from the IAJs' decisions about the use of interpreters and there is no statutory basis for reimbursement in

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[5] At one time, Mašić complained that the Board-appointed interpreter was not qualified, but that argument was waived because he did not raise it at the hearing, in his petition for review to the Board, or at superior court. *Mašić*, 2008 WL 1778315, at *4 n.2; TR (10/25/05) 6-7; RCW 51.52.104 (party filing petition for review at the Board "shall be deemed to have waived all objections or irregularities not specifically set forth therein"); BR 3-33; CP 41-223, 261-304, 308-44.

[6] This brief refers to the certified appeals board record and the hearing transcript in each of the seven consolidated cases by abbreviated case name followed by either BR (record) or TR (transcript) with the date of the hearing, and the page number. The transcript in each case is located in the certified appeals board record for each case.

[7] Kustura alleges that the IAJ "prevented Kustura's interpreter from interpreting testimony and communications with his counsel." *Kustura* Petition 8. This has no support in the record. As the Board pointed out, Kustura could have used his interpreter "to assist him in understanding the testimony of the other witnesses." *Kustura* BR 158.

chapter 2.43 RCW, this Court need not re-examine the discretionary decisions by the IAJ in each case about the use of interpreters. *See Gonzales-Morales*, 138 Wn.2d at 381 (abuse of discretion standard apply to "trial court decisions concerning the use of interpreters").[8]

B. The Department Does Not Violate Due Process Or Equal Protection By Providing English Language Orders

Lukić, Mašić, Memišević, and Resulović failed to timely appeal certain Department orders to the Board. They challenge the Department's English-written orders as violating their procedural due process rights. *Kustura* Petition 12-13; *Mašić* 13-14; *Resulović* 16-17. They also argue that the Department's use of English violated their equal protection rights, claiming that the English language orders constituted discrimination based on their national origin. *Kustura* Petition 14; *Mašić* 14-17; *Resulović* 13-16. The Court of Appeals properly followed the established precedent in

[8] If the Court were to examine the arguments made by the claimants about the use of interpreters during the hearings, some are without merit, and others waived. For example, the Court of Appeals correctly concluded that communications completely outside of the Board hearings are not part of the hearings covered by RCW 2.43.020(3). *Kustura*, 142 Wn. App. at 680 n.47 ("the statute does not include matters beyond the hearing itself, including communications with counsel outside of the hearing and other trial preparation"). The Court of Appeals also correctly noted that none of the claimants in *Kustura* and *Ferenćak* briefed or included in the assignments of errors the issue of whether chapter 2.43 RCW required the Board to appoint an interpreter at perpetuation depositions in which the claimants did not participate. *Kustura*, 142 Wn. App. at 679 n.44; *Ferenćak*, 142 Wn. App. at 729. *Mašić*, *Meštrovac*, and *Resulović* involved no perpetuation deposition, and no claimant briefed perpetuation depositions in their petitions for review. *See* RAP 13.4(c).

rejecting these arguments. *See Kustura*, 142 Wn. App. 674-77, 683-89.[9]

1. English language notices satisfy due process because it is reasonable to expect diligent responses by non-English-speaking claimants

The courts have consistently held that due process does not require government to provide notices or services to LEP persons in their primary languages. *See Soberal-Perez v. Heckler*, 717 F.2d 36, 43 (2d Cir. 1983) (English social security denial notice to Spanish speakers satisfied due process), *cert. denied*, 466 U.S. 929 (1984); *Guerrero v. Carleson*, 512 P.2d 833, 836-37 (Cal. 1973) (welfare termination), *cert. denied*, 414 U.S. 1137 (1974); *Carmona v. Sheffield*, 475 F.2d 738, 739 (9th Cir. 1973) (unemployment benefit denial); *Alfonso v. Bd. of Review*, 444 A.2d 1075, 1076-78 (N.J. 1982) (same); *Hernandez v. Dep't of Labor*, 416 N.E.2d 263, 266-67 (Ill. 1981) (same); *Commonwealth v. Olivo*, 337 N.E.2d 904, 909-10 (Mass. 1975) (condemnation); *Toure v. United States*, 24 F.3d 444, 446 (2d Cir. 1994) (administrative seizure); *Frontera v. Sindell*, 522 F.2d 1215, 1221 (6th Cir. 1975) (English-only civil service exam).[10]

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[9] The Department will not engage in separate due process or equal protection analysis under Washington's Constitution, because the claimants never made any such analysis or claimed that a greater protection is provided under Washington's.

[10] The cases relied on by the claimants do not hold to the contrary and address issues that are not analogous to this case. *See Ruiz v. Hull*, 957 P.2d 984 (Ariz. 1998) (Arizona constitutional amendment banned public employees' use of non-English languages); *Jones v. Flowers*, 547 U.S. 220, 126 S. Ct. 1708, 164 L. Ed. 2d 415 (2006) (tax lien house sale after its notice sent by a certified mail was returned unclaimed). Unlike the situation in *Ruiz*, the Department does not prohibit use of any non-English

English language notices satisfy due process because it is reasonable to contemplate diligence and further inquiry by a LEP person receiving such notice. *See Soberal-Perez*, 717 F.2d at 43 ("A rule placing the burden of diligence and further inquiry on the part of a non-English-speaking individual served in this country with a notice in English does not violate any principle of due process."); *Guerrero*, 512 P.2d at 836 ("[T]he government may reasonably assume that the non-English speaking individual will act promptly to obtain [language] assistance when he receives the notice in question."); *Nazarova v. INS*, 171 F.3d 478, 483 (9th Cir. 1999) ("It has long been established that due process allows notice of a hearing (and its attendant procedures and consequences) to be given solely in English to a non-English speaker if the notice would put a reasonable recipient on notice that further inquiry is required."); *Olivo*, 337 N.E.2d at 909 (in-hand service of an English notice by a constable was sufficient to alert a LEP person to seek translation).

The record confirms that the Department's notices are reasonable. Each order contained the Department address, a claim manager's phone number, and the claimant's name, claim number, and injury date. *Lukić* BR 150, 532; *Mašić* BR 74; *Memišević* BR 68, 586, 635; *Resulović* BR 90, 132-33. These were not the first orders the claimants received. Lukić,

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language. Unlike the house owner who never received notice in *Jones*, Lukić, Mašić, Memišević, and Resulović received notice but did not diligently seek appeal.

Memišević, and Resulović had received benefits with time-loss payment orders, and Mašić had two prior claims on which he had used English in corresponding with the Department and had timely challenged an order in English. *Lukić* BR 258-61 (stipulated history); *Memišević* BR 646-51 (same); *Resulović* BR 123 (same); *Mašić* TR (10/25/05) 41, (11/9/05) 25, 28, 214-16; *Mašić* BR 74, BR Ex. 3, 4, 10, 11, 16.[11]

These orders put a reasonable LEP claimant on notice that a further inquiry is required. In fact, Lukić hired an attorney before the issuance of the wage computation order but still failed to timely appeal. *Lukić* TR (4/24/03) 52. Mašić had the claim rejection order translated and hired his attorney well within the appeal deadline but failed to timely appeal. *Mašić* TR (10/25/05) 34, (11/9/05) 199-200; BR Ex. 6. Memišević used an interpreter "every time" she received a Department document, but she did not timely appeal the wage order. *Memišević* TR (12/11/03) 76. Resulović obtained language help in sending many English documents to the Department and had requested and been provided an interpreter for a phone conversation with a Department claim adjudicator, but she did not timely appeal wage and claim closing orders. *Resulović* TR (8/17/05) 42-48, 54, 64-74, (9/7/05) 8-9, 13, 17-18, 28; BD Ex. 2-6.

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[11] *See also Kustura*, 142 Wn. App. at 671 n.9 ("Curiously, the workers do not indicate whether the unappealed orders were sent to counsel or otherwise explain the circumstances surrounding the receipt of these orders or their failure to appeal them. We also note that these orders are not part of the appellate record.").

The claimants' own testimony thus confirmed that the Department orders sufficiently alerted them to obtain translation or legal representation, and Washington law gave them 60 days to respond. RCW 51.52.060. The Department's English notices did not violate due process.

2. English language orders do not create a suspect class or violate equal protection

The standard of review under equal protection in a case that does not involve a suspect class or a fundamental right is rational basis. *Seattle Sch. Dist.*, 116 Wn.2d at 362 (citation omitted). The claimants do not assert any fundamental right but argue that the Department's use of English classifies people based on national origin, creating a suspect class.

The Department's use of English does not create a suspect class based on national origin. "Language, by itself, does not identify members of a suspect class." *Soberal-Perez*, 717 F.2d at 41; *Olivo*, 337 N.E.2d at 911 (inability to read English is "not a suspect class"); *Valdez v. N.Y. City Hous. Auth.*, 783 F. Supp. 109, 122 (S.D.N.Y. 1991) (same); *Moua v. City of Chico*, 324 F. Supp.2d 1132, 1137-38 (E.D. Cal. 2004) ("no case has held" that English services to LEP persons constitute national origin discrimination). The Department's use of English does not classify persons based on Bosnian or other national origin because all LEP persons are treated equally without regard to their national origin.

To claim the Department classified the claimants based on their Bosnian national origin, they rely on a foreign accent employment discrimination case – *Xieng v. Peoples Nat'l Bank of Wash.*, 120 Wn.2d 512, 844 P.2d 389 (1993). *See, e.g., Kustura* Petition 14 n.15. There is a difference between discrimination based on an accent and using English for all notices, even to LEP persons. *See Napreljac v. John Q. Hammons Hotels, Inc.*, 461 F. Supp.2d 981, 1030 n.31 (S.D. Iowa 2006) (distinguishing termination for a foreign accent and for inability to "understand and communicate in English"). "Interchanging national origin and language is a legal and logical error." *Napreljac*, 461 F. Supp.2d at 1030. The Department's use of English has nothing to do with how a Bosnian accent could identify a Bosnian national.[12]

Thus, the Department's use of English need only meet the rational basis test. Under this test, the challenged act is presumed constitutional, and the classification must be upheld "unless it rests on grounds wholly irrelevant to achievement of legitimate state objectives." *Tunstall v.*

[12] The claimants also rely on language in Executive Order 13,166, 65 Fed. Reg. 50,121, 2000 WL 34508183 (Aug. 11, 2000), that federally-assisted programs should be made meaningfully accessible to LEP persons to avoid Title VI-proscribed discrimination. EO 13,166 is "intended only to improve the internal management of the executive branch" and "does not create any right or benefit, substantive or procedural, enforceable at law or equity". Exec. Order No. 13,166 § 5. Title VI prohibits only intentional discrimination, and there is no private right to enforce regulations made under Title VI. *Alexander v. Sandoval*, 532 U.S. 275, 280-91, 121 S. Ct. 1511, 149 L. Ed. 2d 517 (2001). In any event, the Executive Order does not show that the Department's use of English classifies persons based on national origin or creates a suspect class.

Bergeson, 141 Wn.2d 201, 226, 5 P.3d 691 (2000). A classification "will be upheld if any conceivable state of facts reasonably justifies the classification." *Tunstall*, 141 Wn.2d at 226. The claimants have the burden of proving that the classification is "purely arbitrary." *Id.*

The Department's use of English is not irrational or arbitrary. The courts have consistently upheld use of English to LEP persons under equal protection. *See Carmona*, 475 F.2d at 739 (English unemployment benefit denial notices to Spanish speakers do not violate equal protection); *Soberal-Perez*, 717 F.2d at 42-43 (social security denial notice); *Olivo*, 337 N.E.2d at 911 (condemnation); *Guerrero*, 512 P.2d at 837-39 (welfare termination); *Guadalupe Org. v. Tempe Elementary Sch. Dist.*, 587 F.2d 1022, 1026-29 (9th Cir. 1978) (no right to bilingual education); *Frontera*, 522 F.2d at 1218-20 (no right to civil service exam in Spanish); *Moua*, 324 F. Supp. 2d at 1139 (equal protection does not require police to provide Hmong interpreter for crime victims). The courts have recognized a legitimate government purpose to use the common language spoken in this country, i.e., English. *See Frontera*, 522 F.2d at 1220 ("Our laws are printed in English and our legislatures conduct their business in English.").

The claimants complain that the Department provides Spanish notices to Spanish-fluent claimants, but not Bosnian notices to Bosnian-fluent claimants, arguing that this different treatment violates equal

protection. *E.g., Kustura* Petition 14-15. The provision of Spanish language services, however, still does not show classification based on national origin. Moreover, the claimants do not accurately describe the Department's actions with respect to LEP claimants. The Department provides interpreter services for specified oral communications for LEP claimants and translation of written documents to and from unrepresented claimants upon request. Management Update (App. C).

In any event, Spanish notices do not violate equal protection. Government may take a step-at-a-time approach to a societal issue, which must be upheld if it is "rationally based and free from invidious discrimination." *Dandridge v. Williams*, 397 U.S. 471, 486-87, 90 S. Ct. 1153, 25 L. Ed. 2d 491 (1970). There is a legitimate noninvidious purpose for the Department to provide services in English and Spanish. *Kustura*, 142 Wn. App. at 688. "It reflects the reality that these are the primary languages spoken both in this state and in the United States." *Id.*[13]

[13] The claimants have raised, at various levels of their appeals, other arguments under Title VI of the Civil Rights Act, chapter 49.60 RCW, Executive Order 13,166, the black face type requirement in RCW 51.52.050, and GR 33. The Court of Appeals declined to address most of these arguments as waived. *See Kustura*, 142 Wn. App. at 673-74 (black face type, EO 13166 arguments waived); *Ferenčak*, 142 Wn. App. at 729 (RCW 49.60, Title VI, EO 13166 waived); *Mašić*, 2008 WL 1778315, at *4 (black faced type waived), *5 (RCW 49.60 waived); *Resulović*, 2008 WL 1778229, at *5 (RCW 49.60, black face type waived). The waived black face type issue is outside the scope of the "interpreter services" issues. The claimants do not raise other issues in any adequate depth for meaningful review in their petitions. *See State v. Thomas*, 150 Wn.2d 821, 868-869, 83 P.3d 970 (2004) ("[T]his court will not review issues for which inadequate argument has been briefed or only passing treatment has been made.").

C. Extraordinary Relief Was Properly Denied To Lukić, Mašić, Memišević, And Resulović, Who Failed To Show Diligence Or Extraordinary Circumstances Justifying Their Late Appeals

Similar to their due process argument, Lukić, Mašić, Memišević, and Resulović argued that their late appeals must be excused for extraordinary circumstances. This argument can fairly be said to present an "interpreter services issue" on which this Court granted review, to the extent they claim their late appeals must be excused because they are LEP persons who received English language notices from the Department. The Court of Appeals properly concluded that the claimants did not show diligence or extraordinary circumstances and that the Board thus properly dismissed their late appeals. *Kustura*, 142 Wn. App. at 673; *Mašić*, 2008 WL 1778315, at *4; *Resulović*, 2008 WL 1778229, at *6.

A claimant's receipt of a Department order triggers the 60-day period to appeal to the Board under RCW 51.52.060. This Court has found extraordinary circumstances justifying equitable relief from this statutory deadline in two cases: *Ames v. Dep't of Labor & Indus.*, 176 Wash. 509, 514, 30 P.2d 239 (1934) (relief granted to an incompetent committed to a hospital during the appeal period); *Rodriguez v. Dep't of Labor & Indus.*, 85 Wn.2d 949, 949-50, 540 P.2d 1359 (1975) (extreme illiterate found his interpreter hospitalized and unavailable and his mother about to undergo surgery in Texas during the appeal period).

Diligence is required for equitable relief from the 60-day appeal deadline. *Kingery v. Dep't of Labor & Indus.*, 132 Wn.2d 162, 178, 937 P.2d 565 (1997) (relief properly denied when claimant "did not diligently pursue remedies available"); *see also Kingery*, 132 Wn.2d at 182 (Alexander, J., dissenting) (agreeing that diligence is required by concluding that it was shown); *Leschner v. Dep't of Labor & Indus.*, 27 Wn.2d 911, 927, 185 P.2d 113 (1947) ("Equity aids the vigilant, not those who slumber on their rights."); *Harman v. Dep't of Labor & Indus.*, 111 Wn. App. 920, 927, 47 P.3d 169 (2002) (same); *Dep't of Labor & Indus. v. Fields Corp.*, 112 Wn. App. 450, 459, 45 P.3d 1121 (2002) (same).[14]

Lukić, Masic, Memišević, and Resulović do not address diligence in their petitions and made no showing of diligence below. Instead, citing *Rodriguez*, they claim per se entitlement to equitable relief based on their LEP status and their allegation that the Department knew or should have known they were unable to read English. *Kustura* Petition 11-12; *Mašić* 12-13; *Resulović* 10-12. *Rodriguez* does not support them, because, unlike them, extremely illiterate Rodriguez showed diligence. *See Rodriguez*, 85 Wn.2d at 949-50 (Rodriguez received order when his interpreter was

[14] Laws in other contexts likewise contemplate diligence by LEP persons receiving English language notice. *See Diaz v. Kelly*, 515 F.3d 149, 154 (2d Cir. 2008) ("diligence requirement of equitable tolling [for habeas corpus]" imposes a duty to "make all reasonable efforts to obtain assistance to mitigate his language deficiency"); *Mendoza v. Carey*, 449 F.3d 1065, 1069-70 (9th Cir. 2006) (there is no "per se rule" that language limitations can justify equitable tolling).

hospitalized and his mother in Texas about to undergo surgery; he left for Texas, notified the Department by his doctor of his address change, and upon his return, had the order translated and appealed).[15]

Memišević points to the testimony of a Department program manager on a doctor's letter that described her physical conditions when she visited the doctor with a translator. *Kustura* Petition 6; *Memišević* TR (4/5/04) 8-9; BR Ex. 35. She also refers to the program manager's testimony on the Department's use of language services and a phone call from Memišević with an interpreter. *Kustura* Petition 6; *Memišević* TR (4/5/04) 15-17, 50-51. This does not show diligence or prove it was unreasonable for the Department to communicate in written English.

Similarly, Resulović refers to her testimony that she once requested and was provided an interpreter for a phone conversation with a Department claim adjudicator. *Resulović* Petition 3; TR (8/17/05) 14. But before hiring her attorney, she never requested translation of any document; she had corresponded with the Department in English. TR (8/17/05) 42-48. Resulović's testimony does not show she was diligent with respect to her late appeal, that it was unreasonable for the Department

[15] The claimants argue that in *Ferenćak*, the Board found an appeal timely when filed within 60 days after an interpreter communicated a Department order to the claimant. *See, e.g., Kustura* Petition 19. The timeliness in *Ferenćak* was based on the parties' stipulation. *Ferenćak* TR (4/10/03) 4. The agreement in one case does not provide legal authority for the claimants' argument that a LEP person has a per se right to equitable relief from the statutory deadlines.

to communicate in written English, or that her LEP status was the reason for her late appeal. A person's inability to communicate orally does not show the person cannot respond to a written notice within 60 days.

Lukić, Mašić, Memišević, and Resulović thus show no error in the conclusions that they failed to show diligence because they offered no proof their LEP status prevented them from timely appealing the orders:

> [Lukić and Memišević] were not mentally incompetent or physically confined like Ames, nor were they completely illiterate, without English speaking assistance, and physically out of the area during the appeal filing time period like Rodriguez. *Rather, they both had attorneys and/or interpreters to assist them and did not appeal the wage orders when they were able to file timely appeals of other Department orders.*

Kustura, 142 Wn. App. at 673 (emphasis added).[16]

> Mašić had demonstrated access to interpreter services, had filed a protest to the original order denying his claim, and was thus familiar with the process. *Mašić was represented by counsel for over half of the 60-day time period during which an appeal could have been filed.* The Board did not err by finding that Mašić was not entitled to equitable relief from the 60-day requirement.

Mašić, 2008 WL 1778315, at *4 (emphasis added).[17]

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[16] Memišević "always had interpreter" for important matters, *Memišević* TR (10/24/03) 180, and used one "every time" she received a Department document, TR (12/11/03) 76. Lukić hired an attorney "maybe six months" after the Department temporarily stopped benefits in March or April 2000. *Lukić* TR (4/24/03) 52, (9/29/03) 25. On March 5, 2001, her former attorney filed a protest from a prior Department order, and in September 2001, her current attorney filed a protest from yet another order denying time-loss benefits for certain time period, and, in June 2002, requested certain treatment. *Lukić* BR 174-76 (stipulated history); TR (9/29/03) 25. Lukić did not explain why she failed to timely appeal the March 15, 2001 wage order.

> Resulović both had access to neighbors who translated Department forms for her and knew that she could request and obtain an interpreter when talking to Department representatives on the telephone. She cites no extraordinary circumstances that prevented her from receiving the orders, taking timely steps to facilitate her understanding of their import, or timely challenging the orders by filing an appeal with the Board. She has not adequately explained why she did not make further inquiries when she received the orders. The superior court did not err when it adopted the Board's findings that Resulović did not exercise necessary diligence in perfecting and prosecuting her claim for compensation.

Resulović, 2008 WL 1778229, at *6.[18]

This Court should thus affirm the Court of Appeals decisions that there was no basis for extraordinary relief to excuse the untimely appeals of Lukić, Mašić, Memišević, and Resulović.

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[17] Mašić had two prior claims on which he used English in corresponding with the Department. *Mašić* TR (10/25/05) 41, (11/09/05) 14-16; BR Ex. 10, 11, 16. He used English in his timely protest to an interlocutory order in May 2004. BR Ex. 4. He had the September 28, 2004 claim rejection order translated and hired his attorney on October 28, 2004 to handle his claim. BR Ex. 6; TR (10/25/05) 34, (11/09/05) 199-201. He had no good excuse why he was unable to file an appeal by the November 30, 2004 deadline.

[18] Resulović testified to her ready access to language help. *Resulović* TR (8/17/05) 9-20, 62-63, (9/07/05) 18, 28. She never asked the Department to translate any documents before hiring her attorney and sent many English documents with her signature to the Department. TR (8/17/05) 42-48, 54; BD Ex. 2-6. Once in 2000, she requested and was provided an interpreter for a phone conversation with a claim adjudicator. TR (8/17/05) 14. She did not explain why she was not able to timely appeal the April 2001 and February 2004 orders.

IV. CONCLUSION

For the foregoing reasons, the Department requests that the Court affirm the Court of Appeals opinions in this consolidated case.

RESPECTFULLY SUBMITTED this 6th day of April, 2009.

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Appendix A

Table of Issues

TABLE OF ISSUES RAISED (X) OR NOT APPLICABLE TO OR WAIVED BY THE CLAIMANTS							
	Ferenćak	**Kustura**	**Lukić**	**Mašić**	**Memišević**	**Meštrovac**	**Resulović**
1. Claim that RCW 2.43 requires Department-level interpreter services	**Waived** (*Ferenćak*, 142 Wn. App. at 727-28)	**Waived** (*Kustura*, 142 Wn. App. at 679 n.43)	**Waived** (*Kustura*, 142 Wn. App. at 679 n.43)	**X**	**X**	**Waived** (*Meštrovac*, 142 Wn. App. at 705-07)	**X**
2. Claim for reimbursment under RCW 2.43 about interpreter services during Board Hearing	**X**	**X**	**X**	**Interpreter Qualification Waived** (*Mašić*, 2008 WL 1778315, at *4 n.2)	**X**	**X**	**X**
3. Claim that the Department English notices violated due process	**Not Applicable** (timely appeal)	**Not applicable** (timely appeal)	**X**	**X**	**X**	**Not appliable** (timely appeal)	**X**
4. Claim that the Department English notices violated Equal Protection	**Not Applicable & Waived** (*Ferenćak*, 142 Wn. App. at 727-28)	**Not Applicable & Waived** (*Kustura*, 142 Wn. App. at 679 n.43)	**Waived** (*Kustura*, 142 Wn. App. at 679 n.43)	**X**	**X**	**Not Appliable and Waived** (*Meštrovac*, 142 Wn. App. at 705-07)	**X**
5. Claim for equitable relief to excuse untimely appeal to Board	**Not Applicable** (timely appeal)	**Not Applicable** (timely appeal)	**X**	**X**	**X**	**Not Applicable** (timely appeal)	**X**

Appendix B

Chapter 2.43 RCW

RCW 2.43.010
Legislative Intent

It is hereby declared to be the policy of this state to secure the rights, constitutional or otherwise, of persons who, because of a non-English-speaking cultural background, are unable to readily understand or communicate in the English language, and who consequently cannot be fully protected in legal proceedings unless qualified interpreters are available to assist them.

It is the intent of the legislature in the passage of this chapter to provide for the use and procedure for the appointment of such interpreters. Nothing in chapter 358, Laws of 1989 abridges the parties' rights or obligations under other statutes or court rules or other law.

RCW 2.43.020
Definitions

As used in this chapter:

(1) "Non-English-speaking person" means any person involved in a legal proceeding who cannot readily speak or understand the English language, but does not include hearing-impaired persons who are covered under chapter 2.42 RCW.

(2) "Qualified interpreter" means a person who is able readily to interpret or translate spoken and written English for non-English-speaking persons and to interpret or translate oral or written statements of non-English-speaking persons into spoken English.

(3) "Legal proceeding" means a proceeding in any court in this state, grand jury hearing, or hearing before an inquiry judge, or before an administrative board, commission, agency, or licensing body of the state or any political subdivision thereof.

(4) "Certified interpreter" means an interpreter who is certified by the administrative office of the courts.

(5) "Appointing authority" means the presiding officer or similar official of any court, department, board, commission, agency, licensing authority, or legislative body of the state or of any political subdivision thereof.

RCW 2.43.030
Appointment of interpreter

(1) Whenever an interpreter is appointed to assist a non-English-speaking person in a legal proceeding, the appointing authority shall, in the absence of a written waiver by the person, appoint a certified or a qualified interpreter to assist the person throughout the proceedings.

(a) Except as otherwise provided for in (b) of this subsection, the interpreter appointed shall be a qualified interpreter.

(b) Beginning on July 1, 1990, when a non-English-speaking person is a party to a legal proceeding, or is subpoenaed or summoned by an appointing authority or is otherwise compelled by an appointing authority to appear at a legal proceeding, the appointing authority shall use the services of only those language interpreters who have been certified by the administrative office of the courts, unless good cause is found and noted on the record by the appointing authority. For purposes of chapter 358, Laws of 1989, "good cause" includes but is not limited to a determination that:

(i) Given the totality of the circumstances, including the nature of the proceeding and the potential penalty or consequences involved, the services of a certified interpreter are not reasonably available to the appointing authority; or

(ii) The current list of certified interpreters maintained by the administrative office of the courts does not include an interpreter certified in the language spoken by the non-English-speaking person.

(c) Except as otherwise provided in this section, when a non-English-speaking person is involved in a legal proceeding, the appointing authority shall appoint a qualified interpreter.

(2) If good cause is found for using an interpreter who is not certified or if a qualified interpreter is appointed, the appointing authority shall make a preliminary determination, on the basis of testimony or stated needs of the non-English-speaking person, that the proposed interpreter is able to interpret accurately all communications to and from such person in that particular proceeding. The appointing authority shall satisfy itself on the record that the proposed interpreter:

(a) Is capable of communicating effectively with the court or agency and the person for whom the interpreter would interpret; and

(b) Has read, understands, and will abide by the code of ethics for language interpreters established by court rules.

RCW 2.43.040
Fees and expenses – Cost of providing interpreter – Reimbursement

(1) Interpreters appointed according to this chapter are entitled to a reasonable fee for their services and shall be reimbursed for actual expenses which are reasonable as provided in this section.

(2) In all legal proceedings in which the non-English-speaking person is a party, or is subpoenaed or summoned by the appointing authority or is otherwise compelled by the appointing authority to appear, including criminal proceedings, grand jury proceedings, coroner's inquests, mental health commitment proceedings, and other legal proceedings initiated by agencies of government, the cost of providing the interpreter shall be borne by the governmental body initiating the legal proceedings.

(3) In other legal proceedings, the cost of providing the interpreter shall be borne by the non-English-speaking person unless such person is indigent according to adopted standards of the body. In such a case the cost shall be an administrative cost of the governmental body under the authority of which the legal proceeding is conducted.

(4) The cost of providing the interpreter is a taxable cost of any proceeding in which costs ordinarily are taxed.

(5) Subject to the availability of funds specifically appropriated therefor, the administrative office of the courts shall reimburse the appointing authority for up to one-half of the payment to the interpreter where an interpreter is appointed by a judicial officer in a proceeding before a court at public expense and:

(a) The interpreter appointed is an interpreter certified by the administrative office of the courts or is a qualified interpreter registered by the administrative office of the courts in a noncertified language, or where the necessary language is not certified or registered, the interpreter has been qualified by the judicial officer pursuant to this chapter;

(b) The court conducting the legal proceeding has an approved language assistance plan that complies with RCW 2.43.090; and

(c) The fee paid to the interpreter for services is in accordance with standards established by the administrative office of the courts.

RCW 2.43.050
Oath

Before beginning to interpret, every interpreter appointed under this chapter shall take an oath affirming that the interpreter will make a true interpretation to the person being examined of all the proceedings in a language which the person understands, and that the interpreter will repeat the statements of the person being examined to the court or agency conducting the proceedings, in the English language, to the best of the interpreter's skill and judgment.

RCW 2.43.060
Waiver of right to interpreter

(1) The right to a qualified interpreter may not be waived except when:
   (a) A non-English-speaking person requests a waiver; and
   (b) The appointing authority determines on the record that the waiver has been made knowingly, voluntarily, and intelligently.

(2) Waiver of a qualified interpreter may be set aside and an interpreter appointed, in the discretion of the appointing authority, at any time during the proceedings.

RCW 2.43.070
Testing, certification of interpreters

(1) Subject to the availability of funds, the administrative office of the courts shall establish and administer a comprehensive testing and certification program for language interpreters.

(2) The administrative office of the courts shall work cooperatively with community colleges and other private or public educational institutions, and with other public or private organizations to establish a certification preparation curriculum and suitable training programs to ensure the availability of certified interpreters. Training programs shall be made readily available in both eastern and western Washington locations.

(3) The administrative office of the courts shall establish and adopt standards of proficiency, written and oral, in English and the language to be interpreted.

(4) The administrative office of the courts shall conduct periodic examinations to ensure the availability of certified interpreters. Periodic examinations shall be made readily available in both eastern and western Washington locations.

(5) The administrative office of the courts shall compile, maintain, and disseminate a current list of interpreters certified by the office.

(6) The administrative office of the courts may charge reasonable fees for testing, training, and certification.

RCW 2.43.080
Code of ethics

All language interpreters serving in a legal proceeding, whether or not certified or qualified, shall abide by a code of ethics established by supreme court rule.

RCW 2.43.090
Language assistance plan – Required for each trial court – Submission of plan to interpreter commission - Report

(1) Each trial court organized under this title and Titles 3 and 35 RCW must develop a written language assistance plan to provide a framework for the provision of interpreter services for non-English-speaking persons accessing the court system in both civil and criminal legal matters. The language assistance plan must include, at a minimum, provisions addressing the following:

(a) Procedures to identify and assess the language needs of non-English-speaking persons using the court system;

(b) Procedures for the appointment of interpreters as required under RCW 2.43.030. Such procedures shall not require the non-English-speaking person to make the arrangements for the interpreter to appear in court;

(c) Procedures for notifying court users of the right to and availability of interpreter services. Such information shall be prominently displayed in the courthouse in the five foreign languages that census data indicates are predominate in the jurisdiction;

(d) A process for providing timely communication with non-English speakers by all court employees who have regular contact with the public and meaningful access to court services, including access to services provided by the clerk's office;

(e) Procedures for evaluating the need for translation of written materials, prioritizing those translation needs, and translating the highest priority materials. These procedures should take into account the frequency of use of forms by the language group, and the cost of orally interpreting the forms;

(f) A process for requiring and providing training to judges, court clerks, and other court staff on the requirements of the language assistance plan and how to effectively access and work with interpreters; and

(g) A process for ongoing evaluation of the language assistance plan and monitoring of the implementation of the language assistance plan.

(2) Each court, when developing its language assistance plan, must consult with judges, court administrators and court clerks, interpreters, and members of the community, such as domestic violence organizations, pro bono programs, courthouse facilitators, legal services programs, and/or other community groups whose members speak a language other than English.

(3) Each court must provide a copy of its language assistance plan to the interpreter commission established by supreme court rule for approval prior to receiving state reimbursement for interpreter costs under this chapter.

(4) Each court receiving reimbursement for interpreter costs under RCW 2.42.120 or 2.43.040 must provide to the administrative office of the courts by November 15, 2009, a report detailing an assessment of the need for interpreter services for non-English speakers in court-mandated classes or programs, the extent to which interpreter services are currently available for court-mandated classes or programs, and the resources that would be required to ensure that interpreters are provided to non-English speakers in court-mandated classes or programs. The report shall also include the amounts spent annually on interpreter services for fiscal years 2005, 2006, 2007, 2008, and 2009. The administrative office of the courts shall compile these reports and provide them along with the specific reimbursements provided, by court and fiscal year, to the appropriate committees of the legislature by December 15, 2009.

Appendix C

Management Update

Department of LABOR AND INDUSTRIES

Management Update

Insurance Services: Claims Administration and Self-Insurance

Effective Date
08/13/2007
REVISED 08/17/07

Topic
Interpreter and Translation Services To Workers

Issuing Authority
Sandy Dziedzic
Cheri Ward
Jean Vanek

Interpreter and Translation Services to Workers

The department or self-insured employer (SIE) (including the SIE third party administrator) will provide an interpreter to communicate with an unrepresented worker who has limited English-speaking proficiency or similarly limiting sensory impairment.

NOTE: Where a worker with limited English proficiency is represented by an attorney, the department or SIE may communicate through the attorney in English. It is the responsibility of the attorney representative to communicate with his or her client worker. If the represented worker with limited English proficiency contacts the department or SIE by phone or in person without counsel, an interpreter is authorized for the oral communications. The department or SIE is not required to provide interpreters for communications in relation to any proceedings at the BIIA or Court.

When the worker requests interpreter services, the department or SIE may verify whether the worker needs assistance in translation. Workers can report limited English proficiency status on the Report of Accident, SIF2 form, or by notifying the department or SIE by phone or letter.

Limited English proficiency is defined as limited ability or inability to speak, read, or write English well enough to understand and communicate effectively. This includes most people whose primary language is not English. Services should also be provided to workers similarly impacted by hearing, sight, or speech limitations.

Interpreters are authorized when a limited English proficiency worker needs to communicate with the department or SIE, attend medical and vocational appointments, and at independent medical examinations (IME). Authorized interpreters must be provided by the department or SIE for IMEs.

Interpreter services also include written translation of necessary correspondence to and from the unrepresented limited English proficiency worker. Copies of both the original and translated versions of the document should be maintained in the claim file.

Resources

AT&T Language Line Instructions
http://ohr.inside.lni.wa.gov/webhome/resource_docs/InterpreterService.htm

Online Reference System (OLRS)
http://olrs.apps-inside.lni.wa.gov/

Claims Training Bulletin: Translation Process
Management Memo: Spanish Translations
Training Handout: Services for the Hearing & Speech Impaired
WAC 296-20-2025

Contact Claims Training if you have any questions.

NOTE: This is an interim policy change. This issue has been referred to the policy committee to be included in upcoming revisions.